

STATE OF MICHIGAN
COURT OF APPEALS

JESSIE F. SIMPSON,

Plaintiff/Counter-defendant-
Appellee,

v

JANICE M. SIMPSON,

Defendant/ Counter-plaintiff-
Appellant.

UNPUBLISHED

May 25, 2006

No. 256801

Genesee Circuit Court

LC No. 02-244022-DO

AFTER REMAND

Before: Murray, P.J. and Jansen and Kelly, JJ.

PER CURIAM.

In our prior opinion, we affirmed the trial court's¹ order denying defendant's motion to amend the judgment as it related to the distribution of the marital home, but we remanded solely for the trial court to articulate why it did not award defendant survivorship benefits or, in the alternative, to award survivorship benefits. On remand, the trial court, after reviewing the trial transcripts and relying on the prior findings of fact, awarded survivorship benefits to defendant. We affirm.

We review for clear error a trial court's findings of fact in a divorce proceeding. *McNamara v Horner*, 249 Mich App 177, 182; 642 NW2d 385 (2002). If the trial court's findings of fact are upheld, this Court must then determine whether the dispositive ruling was fair and equitable. *Id.* at 183. In determining an appropriate property division, "[t]he major consideration is the security of the family and the court may utilize any property in the real and personal estate of either party to achieve suitable support for the family as the court 'considers just and reasonable after considering the ability of either party to pay and the character and situation of the parties, and all the other circumstances of the case.'" *Rogner v Rogner*, 179

¹This case was originally assigned to Judge Thomas L. Gadola, who passed away in 2003. Judge Kathryn George, a visiting judge from the Macomb County Probate Court, was presiding when the divorce judgment was entered; consequently, the case was assigned to Judge David Newblatt, who was appointed in 2004 to replace Judge Gadola. Judge Newblatt heard defendant's motion to amend the judgment and issued the opinion on remand.

Mich App 326, 329-330; 445 NW2d 232 (1989), quoting MCL 552.23(1). Moreover, we are mindful that a purpose of survivorship benefits is to provide continued support after the death of the employee spouse.

On remand, the trial court ruled:

The distribution of the property in this marriage was complicated by the fact that the parties separated in 1992 but remained married for an addition[al] 10 years. During the years after the separation it is clear that the parties lead very separate lives. The trial court reasoned that because the pension benefits accrued before the parties separated and required no contribution after the parties separated it was a marital asset to be divided equally as of the date of divorce. The trial court gave no explanation for denying the Defendant survivorship benefits.

The court has broad discretion in dividing property. The key is to assure that the division is equitable under the circumstances. After reviewing the entire record the court concurs that the pension was a passive asset and it was equitable to divide the pension effective as of the date of divorce not the date of separation. This is because the benefits were accumulated prior to the separation and required no contribution by Plaintiff after the separation. The court finds it is also equitable to award Defendant all benefits accrued during the term of the marriage including supplemental and survivorship benefits. The survivorship benefits like all the other benefits were accrued prior to the separation of the parties and it would be inequitable to exclude that benefit.

The trial court did not abuse its discretion in awarding defendant survivorship benefits. As we noted in our prior opinion, the original trial court's findings of fact were not clearly erroneous. Although separated for a significant portion of the marriage, both parties understood the ramifications of remaining married and not seeking a divorce at the time of separation. Plaintiff's pension benefits continued to accrue throughout the entire marriage. Defendant's available assets for her retirement are limited. Her health benefits were always obtained through plaintiff's employment. We conclude that the trial court's decision was fair and equitable under the circumstances presented in this case. *McNamara, supra* at 183.

Affirmed.

/s/ Christopher M. Murray
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly